THE HON'BLE SRI JUSTICE K.C. BHANU

W.P.No.10965 OF 2001

ORDER:

This writ petition is filed seeking to quash the proceedings in Lr.No.666/20/V/P-299/528, dated 16-03-2001 and consequently to hold that the petitioner is not guilty of the charges mentioned in order No.688/20/V/3674, dated 27-12-2000.

The brief facts that are necessary for the disposal of the present writ petition may be stated as follows:

The petitioner joined in the respondent bank as a Clerk in the year 1979 at Bodhan Branch. He is living in the joint family consisting of his mother and his aunt's family, as the properties ascended to them were from their maternal ancestors.

While working at Saidabad Branch, Hyderabad, his maternal aunt by name Smt. G.Swarajya Lakshmi, had opened a joint S.B.Account No.25904 on 23-12-1994 along with his name and the said account was operated till 07-07-1997. The petitioner submits that the cash was deposited in term deposits in his name and in the name of his maternal aunt and also in Sulabh Deposit scheme in Saidabad Branch. The Sulabh Deposit holders will have passbooks issued by the Bank. On 09-02-1998, the maternal aunt of the petitioner went to Saidabad Branch for withdrawal of deposits No.95/4 and 95/5, which were jointly opened in the year 1995, and gave an application to the Branch Manager complaining that she never authorized the petitioner to include his name in the deposits and requested the Manager to delete his name from the deposits and retain her name only. Again on 10-02-1998, she went to Saidabad Branch to get the money as the Deposits No.95/4 and 95/5 were mature on

that day and gave an application to the Branch Manager stating
that she do not have Sulabh Deposit passbooks with her to surrender. On that same day, the petitioner and his maternal aunt jointly executed an indemnity bond with the bank for obtaining a duplicate passbook. After that, the bank issued a duplicate passbook and closed the deposits.

The petitioner submits that due to certain domestic dealings in their landed common properties and certain misunderstandings between his family and his aunt's family, she took the advantage of the Bank transactions, wherein she was fully aware of and party to all, lodged a complainant on
22-12-1998 to the Chief Vigilance Officer against him stating that she is not aware of joint deposits and never opened a joint S.B. Account with him at Saidabad Branch. Basing on the complaint, the second respondent through the proceedings
dated 21-01-1999 placed the petitioner under suspension.
On 25-09-1999, the petitioner submitted a representation for revocation his suspension. The second respondent by proceedings in Lr.No.688/20/V/2574, dated 27-10-1999, issued a charge sheet under Clause 19.5 (J) of Bipartitle Settlement,
for which the petitioner submitted his explanation. As the explanation was not satisfactory, an enquiry officer was appointed and a regular domestic enquiry was conducted and the enquiry officer submitted his report. Basing on the enquiry officer's report, the second respondent issued a show cause notice dated 06-11-2000 proposing the punishment of compulsory retirement from the bank. Challenging the same, the present writ petition is filed.

The learned counsel appearing for the petitioner contended that the enquiry held by the enquiry officer is contrary to the provisions of Bipartitle Settlement; that the complainant who lodged a report with the bank is subsequently withdrawn the same that due to certain domestic problems relating to the common properties, certain misunderstandings arose resulting in lodging the complaint; that the principles of

natural justice have

been violated; that the impugned proceedings are totally

non-application of mind by the disciplinary authority; that the findings are not based upon any evidence and that the punishment imposed by the disciplinary authority is disproportionate to the proved misconduct and hence he prays to allow the writ petition.

On the other hand, the learned counsel appearing for the respondents contended that the enquiry officer after an elaborate enquiry and after giving a reasonable opportunity to the petitioner, conducted the enquiry; that the findings are based upon the evidence available on record; that it is a clear case of misappropriation of amounts withdrawing from the

S.B. Account of smt. G.Swarajya Lakshmi, who is no other than the maternal aunt of the petitioner, and without any authority the petitioner has withdrawn the amounts standing in her name; that full and fair opportunity was afforded to the writ petitioner in the enquiry; since it is a case of misappropriation

of depositors' amounts, proper punishment has been imposed

and there are no grounds to interfere with the impugned proceedings.

The disciplinary proceedings are held in exercise of the domestic jurisdiction of the employer. The holding of such proceedings, of which enquiry into the misconduct of the employee (generally referred to as 'departmental enquiry') is the most important feature, is a precondition to the imposition of any punishment on employee. The employees of the bank are governed by the rules of the bank, which provide for a scheme detailing the procedure to be followed in such proceedings and essentially on following them before imposing any punishment.

Strict rules of evidence are not applicable. Departmental authorities are not like Civil Courts. Although the Evidence Act is not applicable to the disciplinary proceedings, still the misconduct of the delinquent officer must be established by

some cogent evidence, on which objectively a finding can be given about the commission of offence or misconduct. It is equally well settled that conjecture or surmises cannot substitute the requirement of proof. The standard of proof in a departmental proceeding is not as strict as in a criminal proceeding. Hence, proof of standard is only preponderance or probabilities.

The charge levelled against the petitioner is that he has committed number of fraudulent transactions in a Sulabh deposit account standing in the name of G.Swarajya Lakshmi and misappropriated an amount of Rs.2.45 lakhs and he has committed the fraudulent transactions on various occasions by availing loans on the Sulabh Deposit Account standing in the name of G.Swarajya Lakshmi without any authorization from her. It is also alleged that he has opened S.B.Account No.25904 with Saidabad Branch in the name of G.Swarajya Lakshmi and himself (delinquent) without any authorization whatsoever from her by forging her signature and that the photograph affixed on the specimen signature card does not belong to G.Swarajya Laxmi. Therefore, all the above acts constitute major misconduct under Clause 19.5 (J) of Bipartitle settlement.

The petitioner gave an explanation stating that the funds in question were their joint family properties and therefore the same were to be deposited in joint names in the bank. But, his aunt advised him to deposit the funds in her single name at Saidabad Branch. Later, at the instance of his mother, his aunt agreed to convert the deposit accounts into joint names by including his name with her consent only. He further stated that the funds deposited in the Sulabh deposit accounts at Saidabad branch were legitimate funds of their joint family and not his aunt's personal funds alone. Since some of the disputes have cropped up amongst their family members, while sharing the ancestral joint property, she addressed a complaint to the Branch Manager alleging that he (petitioner) misappropriated the funds pertaining to her. Later, his aunt has withdrawn her earlier complaint once

again by addressing a letter. He further stated that the photographs in question were in fact given by his aunt owing to confusion on similarities between her and the mother of the petitioner, since both of them are sisters. The manager of the bank at the relevant point of time has been examined and he has stated that the delinquent introduced with the said Swarajyalakshmi for opening of an S.B.Account. Another witness stated that the amount under Sulabh deposit account has been deposited by the petitioner. The signatures on some of the documents are not tallying. The statements of the witnesses were recorded and several documents were marked. Basing on the evidence available on record, the enquiry officer came to the conclusion that the petitioner has withdrawn an amount of Rs.35,000/- by forged means. The findings are based upon the documents and the evidence available on record. He also gave a finding that the delinquent has willfully submitted the application with the forged signatures of G.Swarajya Lakshmi to have Sulabh Over Draft facility. Since the cash was remitted by the delinquent, the enquiry officer came to the conclusion that the facility was availed by him and the same was not known to the depositor. The disputed signatures and admitted signatures have been sent to a handwriting expert. The handwriting expert submitted a report stating that the signatures of the depositor that were appearing in the application form were not tallying with the actual signature of the depositor. There is also material on record to show that the delinquent availed the Sulabh Over Draft facility by forged means and repaid that amount when the irregularity was noticed. Therefore, the charges leveled against him are proved.

So, it cannot be said that the findings are not based upon any evidence or that the enquiry officer gave perverse findings. For each charge, the enquiry officer has given cogent reasons for arriving at a conclusion with reference to the documents marked in the enquiry. Fair and full opportunity was afforded to the petitioner to cross-examine the witnesses.

The other contention of the writ petitioner is that since the complainant herself withdrawn the letter, and further the complainant was not examined in the departmental enquiry, the proceedings are vitiated.

As per the letter dated 09-03-1999 issued by the G.Swarajya Lakshmi, she has withdrawn the complaint lodged against her nephew (petitioner) due to some misunderstandings and communication gap. Under a receipt dated 09-03-1999, she has received the total amount. If really the amount deposited by the said Swarajya Lakshmi is the joint family funds of herself and the writ petitioner, there is no need for payment of entire amount to her. Since the contents of the complaint of G.Swarajyalakshmi are not denied or disputed even by the delinquent, the examination of the complainant is not necessary. The disciplinary authority, after an elaborate consideration of the matter, correctly found that the petitioner was guilty of misconduct, and therefore, the punishment of compulsory retirement was ordered.

There cannot be any dispute that unless the punishment imposed on the delinquent shocks the consciousness of the Court, normally this Court will not interfere with the punishment imposed on the delinquent. Here is a case where the petitioner forged the signature of her maternal aunt on Sulabh Over Draft debt vouchers. The trust created on the writ petitioner has been shaken by his acts. As an officer of the bank, he has to maintain high standard of integrity and honesty. His conduct in including his name in the account opened without the knowledge of the said Swarajya Lakshmi is a serious misconduct. The delinquent also did not examine any witnesses to show that there were some disputes with regard to the joint family properties. Therefore, in view of those circumstances, the punishment of imposition of compulsory retirement cannot be said to be harsh punishment so as to call for interference by this Court.

The writ petition is totally devoid of merit and according dismissed. No order s to costs.

_____

JUSTICE K.C.BHANU

Date: 23-08-2005.

YCR

THE HON'BLE SRI JUSTICE K.C. BHANU

W.P.No.10965 OF 2001

Date:23-08-2005

Between:

A. Laxman Rao S/o Late Ranga Rao,

Aged 44 years, Occ:Clerk Computer Operator,

Andhra Bank, Dilsukhnagar Branch, Hyderabad.

R/o 5-4-44/1, Kamalanagar, Vanasthalipuram, Hyderabad-70

..... PETITIONER

AND

1 The Deputy General Manager (HRD)

& Appellate of Authority, Personnel Department, Andhra Bank Head Officer,

Koti, Hyderabad and others.

RESPONDENTS